

MEMORIAL

OF THE

CHIEFS AND DELEGATES OF THE WYANDOT INDIANS,

PRAYING

*Payment of the value of their improvements ceded to the United States by
the treaty of March 17, 1842.*

JANUARY 20, 1846.

Referred to the Committee on Indian Affairs.

FEBRUARY 16, 1846.

Ordered to be printed to accompany bill S. No. 83.

To the Congress of the United States of America :

The undersigned, chiefs and delegates of the Wyandot nation of Indians,
beg leave

MOST RESPECTFULLY TO REPRESENT :

That the Wyandot Indians have been greatly aggrieved by the course pursued towards them by the United States, in regard to their late treaty for the cession of all their lands in Ohio and Michigan. They conceive that they have been much misrepresented by persons prejudiced against them ; and from the fact that their rights have not been properly understood, they respectfully insist that gross injustice has been done to them, and the terms of the treaty not yet complied with on the part of the United States ; they, therefore, solicit a respectful hearing in presenting through their chiefs a brief statement of the facts touching the payment for their improvements on the lands lately ceded by them as aforesaid.

The 5th article of the said treaty with the United States reads as follows :

"The United States agree to pay the Wyandots the full value of their improvements in the country hereby ceded by them in Ohio and Michigan, which valuation shall be made by two persons to be appointed by the President of the United States, who shall be sworn faithfully to do justice to the parties, the amount of such valuation to be paid at any time after the 1st day of April, 1843, as shall be acceptable to the Wyandot chiefs to meet their arrangements for emigrating."

To carry out the provisions of this article, the President of the United States appointed Moses H. Kirby and John Walker commissioners to assess the value of the improvements. But before these commissioners could accomplish their work, and report on the subject, the general estimates for the expenses of the Indian department were sent to Congress. The Commissioner of Indian Affairs, acting without any data which could be relied on,

with any certainty, asked an appropriation of \$20,000 to cover this anticipated report of the appraisers.

What data governed the Commissioner of Indian Affairs in asking for an appropriation of only \$20,000 to cover the improvements, the undersigned have been at a loss to discover. But it is fair to infer, from the amount of both the second as well as the first valuation, that he must have relied on the misrepresentations of interested persons, or upon the statements of persons at a distance wholly unacquainted with the immense amount of labor and expense which said improvements had cost the Wyandots.

Before the passage of the general appropriation bill, the award of the commissioners was received, which exhibited the sum of \$127,094 24 as the value of the improvements. The Commissioner of Indian Affairs immediately informed the proper committee of the House of the insufficiency of his estimate, and asked that the bill be so modified as to cover the award of the appraisers. This Congress omitted to do at the time, and the original random estimate of \$20,000 was appropriated.

At this juncture, it became a question among the Wyandots whether it would be politic to emigrate before the United States performed her part of the stipulations of the treaty. An official letter from the War Department, however, determined us to go on with our preparations, and to emigrate.

The following is a copy of the letter just referred to :

"WAR DEPARTMENT,
"Office of Indian Affairs, April 3, 1843.

"SIR: You are aware that the 5th article of the treaty of 17th of March, 1842, provides that the United States shall pay to the Wyandots the full value of their improvements in Ohio and Michigan, according to a valuation to be made by two persons of the President's appointment; the payment to be made at such time, after the 1st day of April, 1843, as shall be acceptable to the Wyandot chiefs, to meet their arrangement for emigrating; and now, as the valuation has been made and reported by duly appointed appraisers, and the Indians have already taken some preparatory steps towards their removal, it is probable that they will expect and claim the full benefit of the above treaty stipulation. Such claim, it is to be regretted, could not, out of existing appropriations, be met by the department; and both because, under existing circumstances, some explanation is due the Indians, and in order that their apprehended disappointment may be followed by the least possible dissatisfaction, I have deemed it proper to make the present communication. At the time the estimates for the expenses of the India bureau were prepared and sent to the House, the value of the improvements, for which the United States stands bound under the treaty to indemnify the Wyandots, was as yet unascertained; and acting upon the best data accessible to the department, I felt confident that I was making an abundant provision to meet the entire obligation in asking, for this purpose, an appropriation of \$20,000. The report of the gentlemen appointed to appraise these improvements, subsequently received, exhibited the unexpected high valuation of \$127,094 24; and thus being enlightened as to the insufficiency of my own estimate, I lost no time in conferring with the Secretary of War, by whom an immediate communication, prepared by myself, was transmitted to the proper committee, informing them of the ascertainment of the amount intended to be provided for, and urging them, in view of the

letter and obvious intent of the 5th article of the treaty, to modify the bill which was then under consideration, accordingly.

"This communication, unfortunately, had not its desired effect. The amount of the original estimate only was appropriated, (viz. \$20,000,) leaving \$107,094 24, for which Congress declined making an appropriation. The best that, under these circumstances, can be done for the parties interested, is to pay them ratably; and you will assure all those who are entitled to participate in the award of the commissioners, that their portions will be seasonably paid. This apportionment, it is hoped, will relieve or satisfy their immediate occasions, and for the rest I shall make timely application to the next Congress for what is wanting to complete the required amount; and there can be no doubt that it will be readily acceded to. Indeed, the stipulations of the treaty, to the full extent of the appraisement, are, in my judgment, as well as in the opinion of the Secretary of War, conclusive and binding on the United States. So that it will be the duty of the department to present the matter again, with its views, to the next Congress, by whom it is believed the necessary appropriation will be made.

"These facts, assurances, and views you will please communicate to the Indians in your charge. That they should properly understand the matter, and that all unpleasant feeling on their part should be prevented, is a subject of some solicitude to the department; and in making the explanations, of which I have furnished you the materials, I have every confidence that you will exercise such judgment and address as to make them entirely conciliatory.

"Very respectfully, your obedient servant,

"T. HARTLEY CRAWFORD.

"Col. PURDY McELVAIN,

"*Upper Sandusky, Ohio.*"

The agent of the United States, upon receiving this letter from the department, assembled the Wyandots in council, and officially communicated the information, and read and explained to us this letter, and gave us the most positive assurances that the appraisement of the improvements then made under the 5th article of the treaty would be paid, and, in the language of the department, that it was "*conclusive and binding on the United States.*"

The following is a copy of a certificate recently appended to the above letter by Colonel McElvain, the agent:

"The above letter was duly read and interpreted to the chiefs and principal men of the Wyandot nation, and upon these assurances the Wyandots gave up their possessions; otherwise, I do not believe they would have removed.

"PURDY McELVAIN."

The Secretary of the War Department was applied to through the Hon. A. S. Smith, on the subject, and the following is a copy of his letter of March 1, 1843:

"In answer to your letter of yesterday, I have to state that there is certainly no authority in this department to revise the proceedings of the commissioners who appraised the improvements of the Wyandot Indians, under the 5th article of the treaty with that tribe. That appraisement was made in pursuance to a treaty duly ratified, and I do not see how its pro-

visions, or the consequences of them, can be changed, even by law. The payment for their improvements has become a matter of contract, the amount having been ascertained by arbitrators appointed by us, and unless fraud can be shown in the award, I do not see how the government can escape its obligations. We are disappointed in the amount, but this is no common event to litigant parties. The appraisers were highly recommended, and are believed to be honorable and capable men.

“Very respectfully, your obedient servant,

“J. C. SPENCER.”

The Wyandots relied on these views and assurances given to them by the authorities of the United States. And it was under these positive assurances, given to them by the officers of the government, that the Wyandots concluded to remove and give up possession of their old homes. Had they for one moment supposed that the United States would have hesitated and higgled about paying them for their improvements, according to the valuation made under the treaty, they would not have consented to remove. The United States had the selection of the appraisers in their own hands. The commissioners who made the appraisement were citizens of the United States and officers of their own government. The appraisement was, in fact, the act of the government itself in the execution of a solemn treaty. We cannot believe that the United States will now turn round and repudiate its own act, done in the execution of a solemn compact with a weaker power. It is true the United States has the power to do injustice to the poor remnant of our nation which now remains; but in the face of a solemn treaty, and in violation of the great and immutable principles of right and justice, we cannot yet believe it will be willingly done.

It has been intimated that there was fraud on the part of the appraisers. If the United States could disregard the stipulations of a solemn treaty on the ground of fraud on the part of their own officers, it is at least incumbent on the part of the party alleging the fraud to prove it. Every mode of setting aside an engagement on the ground of fraud holds the party alleging the fraud to make it manifest. In this instance, instead of fraud having been proved by the United States, the Wyandots have proved the negation of the charge. The depositions of Moses H. Kirby and John Walker, herewith submitted, must put the charge of fraud entirely at rest. And in repelling this groundless charge of fraud, Kirby and Walker are corroborated and sustained by the depositions of Judge Cary and Colonel John McElvain and others, likewise submitted. This charge of fraud appears to have had its origin solely in the fact that the valuation was higher than was expected by persons who, perhaps, were never within five hundred miles of the lands, and whose opinions of the value of the improvements were probably formed from the representations of persons desiring a low appraisement, and expecting to purchase these Indian lands, containing highly cultivated farms, nearly as low as the ordinary price of government lands in the woods. Could a disinterested person who never saw the lands form an accurate estimate of the value of those improvements? It is a matter, too, about which men may honestly and widely differ in judgment.

In the appraisement of the improvements we believe that fraud has never been charged on the Wyandots, and we know it cannot be charged on them without a gross and wilful perversion of truth. If, then, the officers appointed by the President to make the appraisement could have been

guilty of fraud without fault on the part of the Wyandots, can the United States take advantage of it, and thus evade the terms of the treaty ?

These appraisers were officers of the United States, and their acts were the acts of the government. And there is no better settled rule, than that a party cannot take advantage of his own fraud, and much less escape from the stipulations of his own engagement, by charging fraud upon himself, and that too without proof of the fact.

If the appraisers had estimated the improvements greatly below their value, we, the weaker party, would not have been tolerated in raising an objection to it.

We lived on the lands, knew the improvements, and conscientiously believe that the appraisement was not beyond the cost and value of the improvements. Indeed, some of the Wyandots thought some of the estimates entirely too low. But because the authorities of the United States are disappointed in the aggregate amount of the appraisement, and that too made by their own officers, ought *they* to complain ?

Some sixteen or eighteen months after the appraisement of said improvements, and after the Wyandots had emigrated to the far west, a second appraisement was made and returned by three appraisers appointed by the President, reducing the aggregate of the first appraisement some sixty thousand dollars. The undersigned, in behalf of the Wyandot nation of Indians, positively refuse to recognise this second appraisement as of any validity, for the following unanswerable reasons :

1st. Because it was done after the power under the 5th article of the treaty had been exhausted, and was therefore in violation of the treaty.

2d. It was made without the knowledge and consent of the Wyandots.

3d. It was made by *three persons*, and therefore not in conformity with the treaty. The 5th article of the treaty required the appraisement to be made by *two persons*, to be appointed by the President. It cannot certainly be claimed that this authorized the President to appoint various and successive sets of appraisers, and even varying in number from the treaty, until the valuation of the improvements could be brought down to the vague expectation of public officers at a distance, who could know nothing of the worth of the improvements, except from the irresponsible representations of others. When the first set of appraisers were appointed and made their appraisement, the power of the President was exhausted, and the treaty in this respect executed. If the President could have appointed a second set of appraisers, he could have appointed a third and a fourth set, and any successive number. And if he could have appointed three, he could have appointed twenty men to act as appraisers.

4th. The second appraisement was made after the improvements had suffered great damage and dilapidation. After the Wyandots gave up possession, the United States did not protect and take care of the improvements. Intruders were permitted to take possession, and houses were burned down and removed ; fences destroyed, and the improvements permitted to become out of repair, and to fall into dilapidation. In this condition, the second appraisement took place.

5th. The orders issued to the second appraisers were equivalent to direct instructions to reduce the valuation of the first appraisement, instead of instructions for an impartial review of it.

The following is an extract from those orders :

"The report of these appraisers [to wit: Kirby and Walker] has been

received, and the amount of the appraisalment so far exceeds their supposed value that it is regarded as enormous and far beyond the real value of such improvements."

Under these instructions, the second appraisers must have considered themselves bound to make a reduction on the first appraisalment, or otherwise incur the censure of the power by which they were appointed.

6th. The second appraisalment does not include all the improvements. Some houses and items of improvements were overlooked, some set down to the wrong names, and the names of some proprietors omitted entirely. The Wyandots having removed, the improvement of each individual proprietor was not identified or recollected.

The report of the first valuation amounts to	-	-	-	\$127,094 24
The report of the second valuation to	-	-	-	66,941 00
Difference	-	-	-	<u>60,153 24</u>

It is fair to presume that the last appraisers, making their valuation in the absence and without the knowledge of the Wyandots, and in the midst of speculators who desired to purchase the Indian improvements at a low valuation, and making their valuation too under instructions to reduce the former appraisalment, did place every item at its lowest estimate, and that too after the improvements had sunk (in appearance at least) one third in value by damage and dilapidation. This is proof conclusive that the first assumed or alleged expected estimate of \$20,000 was utterly fallacious and founded on false information.

The second appraisalment cannot be relied on, unless Congress is disposed to disregard the high demands of justice and the binding obligations of a solemn treaty. The first appraisalment is the only guide which can be adopted consistently with a proper regard for justice and integrity, which ought to characterize and has heretofore characterized the United States.

The Commissioner of Indian Affairs, with a full knowledge of all the facts, and sensible of the binding obligations of the government, in two several annual reports repeated the following language, which is to be found on the sixth page of his annual report of November 25, 1844, as a quotation from his former report:

"On the 22d of February the report was received, showing the aggregate of valuation to be \$127,094 24. This sum, though deemed to be enormously high, it was believed the government could not decline to pay, because it was ascertained in the mode pointed out by the treaty, and, being so found, fixed the United States for the payment of the amount, from which nothing short of the existence of fraud could absolve them; of that there was neither evidence nor allegation. The additional sum necessary was estimated for, and the proper committee informed that it was the opinion of the department that the government could not escape its obligations. The appropriation bill was not augmented as requested, but was restricted to the \$20,000 contained in the original estimate. This sum was remitted on the 25th May to the sub-agent, with instructions to pay it ratably to the improvement holders. There still remains due to them \$107,094 24, included in the estimates that will be laid before Congress, which I hope may be appropriated."

Thus the matter stands as yet. The Wyandots, through their chiefs, have firmly insisted on their rights under the 5th article of the treaty, and

the department of your government has fully recognised the obligations of the United States. When the \$20,000 was paid, it was received by the Wyandots under the assurances heretofore mentioned, that it was part of the amount of the first appraisal; and that the first appraisal was considered "conclusive and binding on the United States," and would be paid. Since the second appraisal, the Wyandots, through their chiefs, have absolutely and peremptorily refused to receive one dollar unless their rights under the first appraisal should be accorded to them. A few individuals among the Wyandots, however, since their removal to the far west, have, on account of being greatly embarrassed and distressed in their circumstances, received the amount which would be coming to them respectively, according to the amount fixed by the second appraisal. These individuals were compelled, under the stress of circumstances, to take this amount; and they took it, protesting, however, that it was only a part of what was due to them; but as the agent of the United States would not pay it to them without a receipt in full, receipts were by their necessities extorted from them. These payments were confined to a few individuals, acting each for himself and against the will of the nation. The chiefs representing the nation have in no respect and never will yield their rights under the treaty. The treaty was a transaction between the chiefs of the Wyandot nation and the United States; and it is not to be presumed that the United States, after withholding the just dues of the Wyandots under the treaty, would condescend to take advantage of the distressed pecuniary circumstances of a few individual Wyandots in violation of the obligations of a solemn treaty, on account of any individual receipts extorted by necessity.

Allow us, therefore, respectfully and solemnly to declare to the Congress of the United States, that we cannot and will not, while there is a Wyandot left on the earth, recognise the second valuation of our improvements as a fulfilment of the treaty—the same being a palpable violation of that treaty which your own constitution declares shall be the supreme law of the land, and made under circumstances calculated to do gross injustice to the Wyandots. And we shall never yield the great principles of justice by which the award of the appraisers under the treaty, as soon as it was made, became absolute, and on which no alteration could be made or new valuation awarded, without the consent of both the parties to the compact.

The full value of our improvements under the treaty, was due to us, and required to be paid before our removal, and at the time of the payment of the \$20,000, made in May, 1843. The United States having withheld the balance on our improvements, after the same was due and required under the treaty, cannot now, upon any principle of right, deny us the interest upon that balance. The payment for the improvements, by the express terms of the treaty, was intended to meet our arrangements for emigrating; which advantage was lost. The Wyandots have sustained great loss by disappointment, and by lying out of the use of this money in their late removal and settlement in the far west. None but the Wyandots can fully estimate the disadvantages suffered in their new settlement without this money. If the United States should make them no allowance for these losses, beyond the interest on the money, we ask in justice that we be allowed our expenses for leaving our families, our homes, and our business, and coming to Washington to insist on our rights—a duty to ourselves and our

nation which the United States brought upon us, and caused to become unavoidable; and which allowance has been in accordance with former usage.

And the undersigned, being at a great distance from their homes, at a great loss and expense to themselves and their people, most respectfully and earnestly solicit the earliest action of Congress which is practicable on the subject submitted.

In conclusion, the undersigned take the liberty of reminding Congress of the vast acquisitions which the United States formerly obtained from the Wyandots. The immense fertile region of country lying between the Ohio river and lake Erie once belonged to, and was occupied by, the Wyandots, and was theirs by occupancy and every principle of right and justice. This extensive country was ceded to the United States by the Wyandots for a trifling consideration, reserving only the lands lately ceded in Ohio and Michigan. It is the settled opinion of the Wyandot nation, and has been for many years, that they have been unfortunate and have suffered great sacrifices in every treaty which they have ever made with the United States. The last treaty, ceding the little remnant of their lands in Ohio and Michigan, was entered into by the Wyandots with great reluctance and hesitation. These reservations had been selected by them as a home, where they desired and intended to remain permanently. Here were all their local attachments and the associations of their childhood, and on these lands reposed the bones and ashes of their fathers. The Wyandots desired to live here and die here. And for many years the solicitations and importunities of the agents of the United States for the cession of these lands and a removal to the west, were peremptorily rejected. But the importunities of the agents of the United States to procure a cession of these lands, was continued, and became exceedingly annoying, and, indeed, harassing to the Wyandots. After being thus troubled, by the unceasing and urgent importunities of the agents of the United States, for more than fifteen years, to emigrate to the far west, the Wyandots finally reluctantly yielded to the terms of the late treaty, and agreed to abandon their old homes, and cut themselves off from all their existing local attachments and associations. When the Wyandots hesitated and expressed fears that the United States, having all the power in their own hands, would take the advantage of them, all their doubts and fears were at the time removed by the positive assurances from the agents of the government that the stipulations of the treaty would be promptly and faithfully performed by the United States; and that, whatever they might conceive they had lost by former treaties, they might rest certain of being treated with liberality and magnanimity by the government in this instance. The settlement of the Wyandots in the far west has been attended with difficulties and disadvantages which, they are satisfied, none but themselves can fully appreciate. Their numbers have been thinned by sickness and disease incident to a new climate. Many of their best and most experienced men have gone to their long rest. Those remaining have toiled under great disadvantages to render their new homes comfortable.

Under these circumstances, if the Wyandots shall not be tolerated in any claims upon the liberality and magnanimity of the United States, they trust and hope that they may not be turned away by delay and cold indifference, when they ask nothing more than the clear and express stipulations of the treaty give them.

We therefore most respectfully and urgently insist on the immediate action of Congress on our business, in order that we may return to our homes and our people.

JAMES WASHINGTON, *Principal chief.*
 HENRY JAQUIS,
 JOHN W. GREYEYES, } *Chiefs.*
 JOHN M. ARMSTRONG,

Delegate and interpreter.

FULLER'S HOTEL, Washington, D. C., January 17, 1846.

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We therefore most respectfully and urgently appeal on the immediate part of Congress on our business in order that we may return to our homes and our people.

JAMES WASHINGTON, Principal Clerk,
HENRY JAGGER,
JOHN W. GRIFFITHS,
JOHN M. ARMSTRONG,

Delegates and Electors.

Foreign Hotel, Washington, D. C., January 11, 1876.